

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ESPERANZA DENNIS
Plaintiff,

v.

COSTCO WHOLESALE
CORPORATION
Defendant.

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CIVIL ACTION NO. 5:20-cv-00992

DEFENDANT'S NOTICE OF REMOVAL

Defendant, COSTCO WHOLESALE CORPORATION ("Costco"), files this Notice of Removal under 28 U.S.C. §§ 1441, 1446, and 1332, and respectfully shows the Court the following:

**I.
Introduction**

1.1 On July 8, 2020, Plaintiff ESPERANZA DENNIS filed a personal injury lawsuit against Costco in the 408th Judicial District Court of Bexar County, Texas, under Cause No. 2020CI12495. *Plaintiff's Original Petition, Ex. 1*. Ms. Dennis alleges that she suffered injuries when she was struck by a series of carts being pushed by an employee of Costco while shopping at the Costco warehouse located at 15330 I-35 N, Selma, Texas 78154. *Id.*, at ¶¶ 4.00-4.01. As a result of her claimed bodily injuries, Ms. Dennis seeks to recover damages for: past and future physical pain and suffering; past and future disfigurement; past and future mental anguish; past and future physical impairment; past and future medical expenses; and out of pocket expenses. *Id.*, at ¶¶ 6.00, 6.02.

1.2 Ms. Dennis's state court action is one over which this Court has original jurisdiction under 28 U.S.C. § 1332 and which may be removed to this Court in accordance with 28 U.S.C. § 1441. This is a civil action in which the matter in controversy exceeds \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

1.3 Service of Citation of Plaintiff's Original Petition on Defendant Costco was executed on July 24, 2020. *See Service of Process Transmittal, Ex. 2.* Costco filed its Original Answer in the state court action on August 17, 2020. *See Defendant Costco Wholesale Corporation's Original Answer to Plaintiff's Original Petition, Ex. 3; State Court Docket Sheet, Ex. 4.*

II. The Parties

2.1 Plaintiff Ms. Dennis is a Texas citizen, who resided in Bexar County, Texas at the time of the accident at issue. *Plaintiff's Original Petition*, at ¶ 2.00, *Ex. 1.*

2.2 Defendant Costco is a Washington Corporation with its principal place of business in the State of Washington. *See Franchise Tax Account Status, Office of Texas Comptroller, Ex. 5.*

III. Procedural Requirements for Removal

3.1 Removal is timely, as this Notice is filed within 30 days of Costco receiving service of summons and Plaintiff's Original Petition on July 24, 2020. *See 28 U.S.C. § 1446(b)(1).*

3.2 Written notice of the filing of this Notice of Removal is being given to Ms. Dennis and her counsel as required by Texas law. Further, Costco is filing a copy of this Notice with the Clerk of the Court for Bexar County, Texas—where Ms. Dennis's cause was originally filed. *See Costco's Notice of Filing of Notice of Removal, Ex. 6.*

3.3 Costco has submitted a copy of all processes, pleadings, and orders to this Court as required by 28 U.S.C. § 1446(a).

IV. Venue

4.1 Venue in this district is proper because the Western District of Texas, San Antonio Division, includes Bexar County. Bexar County is the county where the alleged incident occurred and where the original lawsuit is pending. *Plaintiff's Original Petition*, at ¶ 3.00.

V.
Jurisdictional Basis for Removal

5.1 Removal is proper pursuant to 28 U.S.C. § 1332 because there is complete diversity between the parties and the amount in controversy exceeds \$75,000.00.

5.2 First, complete diversity of citizenship exists between the parties. Plaintiff, Ms. Dennis represents that she is a Texas resident. *Plaintiff's Original Petition*, at ¶ 2.00, **Ex. 1**. Costco is the only named Defendant in this lawsuit. *See id.*, at ¶ 2.01. Ms. Dennis concedes that Costco is a “foreign corporation.” *See id.* Indeed, Costco is a Washington Corporation with its principal place of business in the State of Washington. *Franchise Tax Account Status, Office of Texas Comptroller, Ex. 5*. Costco is therefore deemed a citizen of Washington for diversity purposes. *See* 28 U.S.C. § 1332(c). For these reasons, the parties are completely diverse, and removal is appropriate on this ground.

5.3 Second, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. In determining whether the amount in controversy has been met, the general rule is that the sum claimed by the plaintiff controls if the claim is apparently made in good faith. *Okeke v. Auto. Fin. Corp.*, 2016 U.S. Dist. LEXIS 196918, *16, 2016 WL 11582509 (W.D. Dist. Tex. Feb. 3, 2016) (citing *St. Paul Mercury Indemn. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89, 58 S. Ct. 586, 82 L. Ed. 845 (1938)). Here, Ms. Dennis represents to the state Court that she seeks damages of over \$200,000.00, but not more than \$1,000,000.00. *Plaintiff's Original Petition*, at ¶ 25., **Ex. 1**. As such, the amount in controversy requirement for removal is apparent on the face of Plaintiff's pleading.


VI.
Jury Demand

6.1 Costco asserts its rights under the Seventh Amendment to the U.S. Constitution and demands, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.

**VII.
Prayer**

WHEREFORE, PREMISES CONSIDERED, Defendant Costco Wholesale Corporation prays that this Notice of Removal be deemed sufficient and that the proceedings attached hereto be removed from the 408th District Court of Bexar County, Texas to the docket of this Honorable Court.

Respectfully submitted,

By: 
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**ATTORNEY FOR DEFENDANT,
COSTCO WHOLESALE CORPORATION**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was forwarded in accordance with the Federal Rules of Civil Procedure on the 24TH day of August, 2020, to:

VIA E-MAIL AND E-SERVICE

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